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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,097	01/02/2002	David G. Luckstead		8663

7590 05/16/2003

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EXAMINER

FITZGERALD, JOHN P

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 05/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/039,097

Applicant(s)

LUCKSTEAD, DAVID G.

Examiner

John P Fitzgerald

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 9 and 11-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10 and 16-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 9 and 11-15 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention: Figures 1-4; Figure 5; Figures 6-8; Figure 9; Figure 10; Figure 11.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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2. During a telephone conversation with Mr. G. Turner Moller on 07 May 2003 a provisional election was made without traverse to prosecute the invention of a "Convertible Cane," claims 1-8, 10 and 16-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9 and 11-15 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 8 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 8 recites the limitation "the first resilient feet" in line 1. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

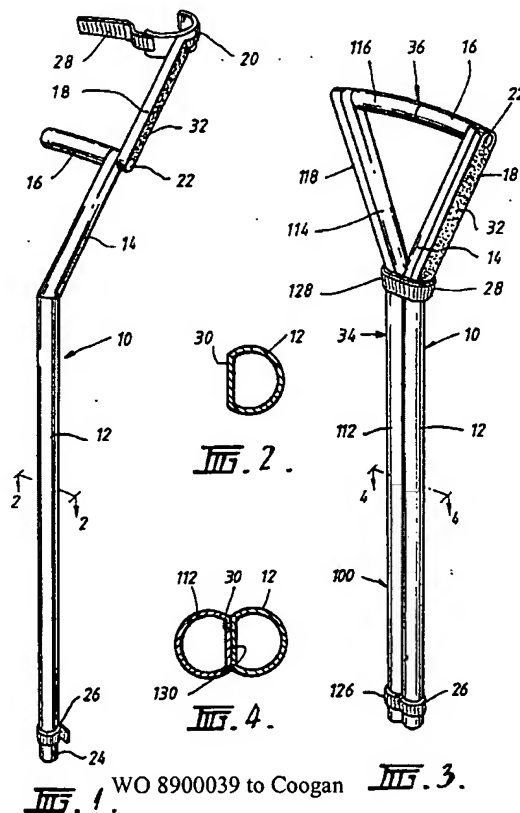
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 4, 5 and 7 are rejected under 35 U.S.C. § 102(b) as being anticipated by WO 8900039 to Coogan. WO 86900039 to Coogan discloses a convertible cane assembly (Figs. 1-4)

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comprising a pair of walking canes (10) each having an upright support (12, 112) providing an exterior; a first foot (24) adjacent a lower end of the support and a first handle (16, 116) adjacent an upper end of the support allowing the canes to be used separately, and a connector (28, 128, 26, 126) securing the canes together in a position wherein the support exteriors are in side-by-side relations (Fig. 4) each of the pair of canes having a cross-sectional area that is half of the support cross-sectional area; the assembly providing a second handle (36) for grasping by the user and a second foot for contacting an underlying surface; wherein the first feet in the side-by-side position of the supports, provide a pair of flat surfaces (130) defining a single plane and thereby provide a second foot; wherein the first handles, in the side-by-side position of the support exteriors, provide a second handle; wherein the first handle, in the side-by-side position of the support exteriors, are spaced apart and one of the first handles comprises the second handle.



***Claim Rejections - 35 USC § 103***

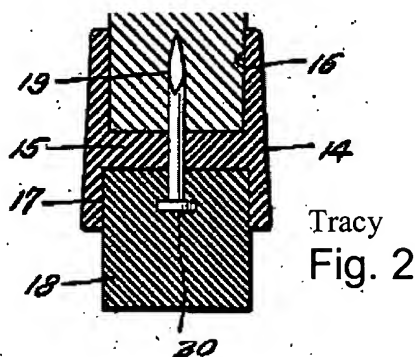
8. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2, 3, 6 and 8 rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 8900039 to Coogan as applied to claim 1 under 35 U.S.C. § 102(b) above, and further in view of Tracy. WO 8900039 to Coogan discloses a convertible cane assembly having all of the elements stated previously. WO 8900039 to Coogan does not expressly disclose a convertible cane assembly wherein each first foot comprises a resilient pad that is at least half of the cross-sectional area of the support; wherein the hand receiving section being not more than about 3" in width; and wherein the resilient feet comprise a rubber pad. Tracy teaches a walking aid (Fig. 2) having a resilient rubber pad (18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the resilient rubber pad taught by Tracy, modifying the first feet of the convertible cane assembly disclosed by WO 8900039 to Coogan, thus providing enhanced gripping means when contacting an underlying surface. In specific regards to the pad being at least half the cross section area of the support, it would be obvious to one of ordinary skill in the art that employing the resilient pad to the lower end of the support on each of the first feet, they would be inherently match the cross-sectional shape, being at least half of the cross-sectional area of the support when the pair of canes are in side-by-side relation. In specific regards to claim 7, it would have been obvious to form the hand receiving section not more than about 3 inches in width since it is known that the handle must be adapted to fit a user's

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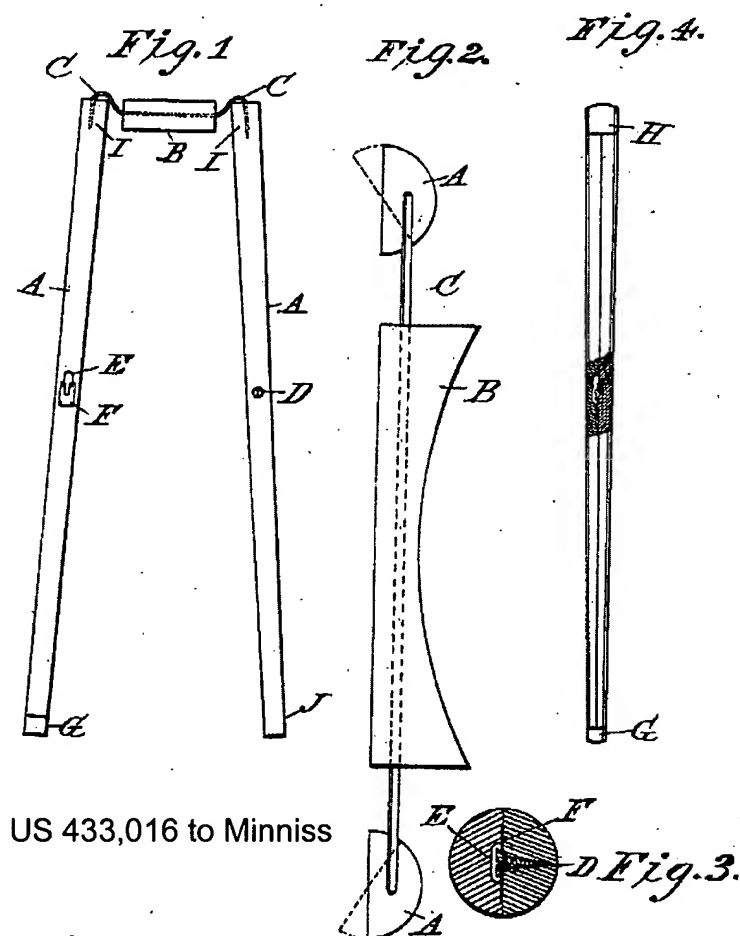
hand comfortably and stably for proper use. Furthermore, employing various sizes of the pair of cane handles is considered to be a design choice, well within the capabilities of one skilled in the art. Lastly, it is considered obvious and well known that resilient rubber pads and/or feet are employed on all types of canes, crutches and walking aids to enhance gripping means to the underlying surface.



10. Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 8900039 to Coogan as applied to claim 1 under 35 U.S.C. § 102(b) above, and further in view of US 433,016 to Minniss. WO 8900039 to Coogan discloses a convertible cane assembly having all of the elements stated previously. WO 8900039 to Coogan further discloses the connector means could be replaced by other fastening or clamping means. WO 8900039 to Coogan does not expressly disclose a convertible cane assembly wherein the other connector means comprises a key hole slot on one of the canes and a headed pin on the other cane, friction between the pin and the slot acting to resist relative and vertical movement between the canes. US 433,016 to Minniss teaches a convertible cane assembly (Figs. 1-3) comprised of a pair of walking canes (A) in side-by-side relation wherein the flat surfaces defining a single plane have a connector means (D, E, F) comprising a key hole slot (E, F) on one of the canes flat surface and a headed pin (D) on the other cane, friction between the pin and slot acting to resist relative vertical movement between

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the canes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the connector means taught by US 433,016 to Minniss, modifying the convertible cane assembly disclosed by WO 8900039 to Coogan, for securing the pair of canes to each other in side-by-side relation, as suggested by WO 8900039 to Coogan.



11. Claims 1-8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US 432,759 to Minniss. US 432,759 to Minniss discloses a convertible cane assembly comprising a pair of walking canes (1, 10) (Figs. 1-4) each having an upright support (2, 20) providing an exterior, a first foot (D) adjacent a lower end of the support and a first handle (B) adjacent an upper end of

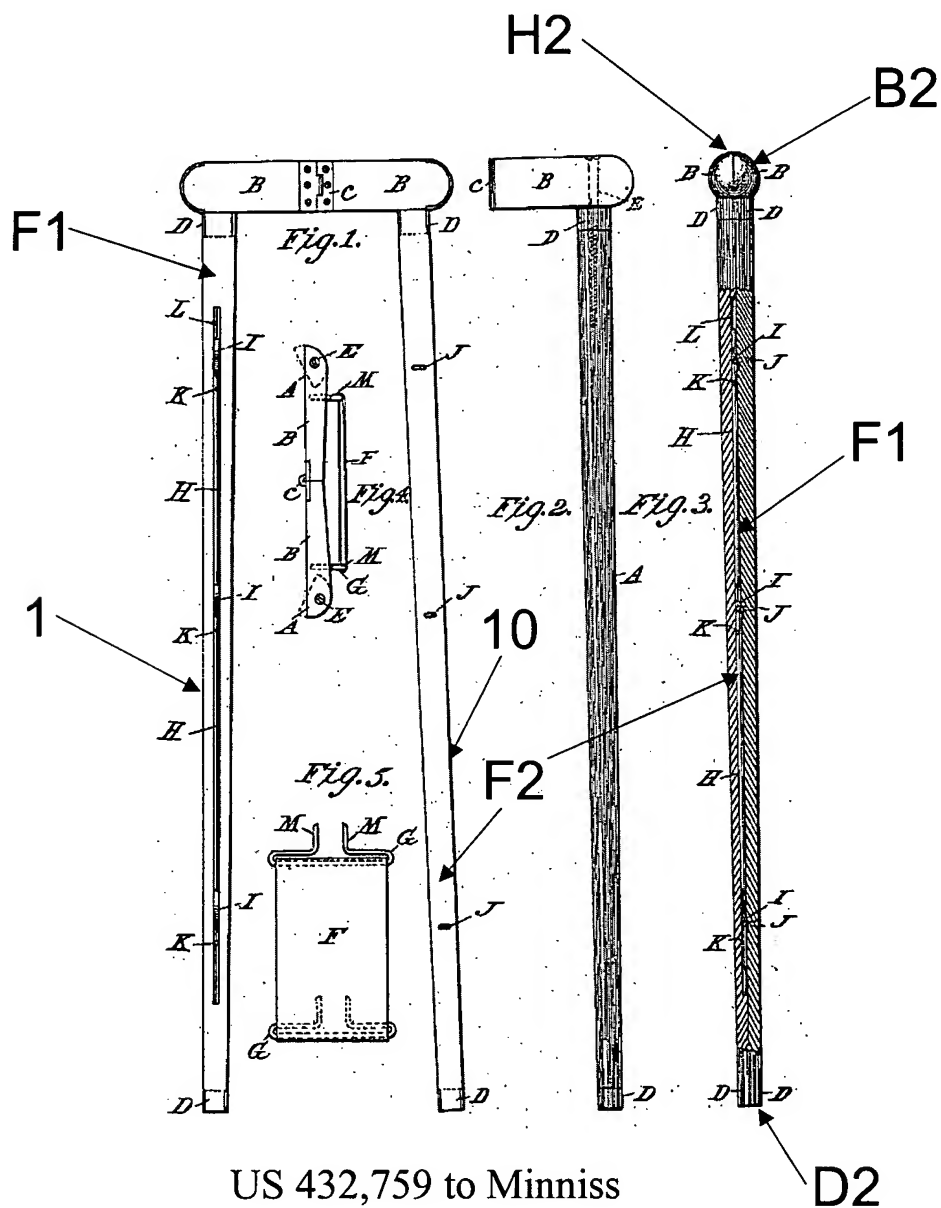


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the support; wherein each first foot is approximately half of the cross-sectional area of the support; a connector (HH, II, KKK) (US 432,759 to Minniss: lines 31-47) securing the canes together in a position wherein the support exteriors are in side-by-side relation and the assembly provides a second handle (B2) for grasping by the user and a second foot (D2) for contacting an underlying surface; wherein the first feet, in side-by-side position of the supports, provide a pair of flat surfaces (F1, F2) defining a single plane and thereby provide the second foot; wherein the first handles, in the side-by-side position of the support exteriors, provide a second handle (B2); wherein the second handle provides a hand receiving section (HR) having a curved upper surface, the hand receiving section being sized to receive a user's hand; wherein the first handles, in the side-by-side position of the support exteriors, are spaced apart and one of the first handles comprises the second handle. US 432,759 to Minniss does not expressly disclose a convertible cane assembly wherein each first handle allows the canes to be used separately; each first foot comprises a resilient pad; wherein the resilient pad is at least half the cross-sectional area of the support; wherein the hand receiving section being not more than about 3 inches in width; and wherein the first resilient feet comprise a rubber pad. In specific regards to the pad being at least half the cross section area of the support, it would be obvious to one of ordinary skill in the art that employing the resilient pad to the lower end of the support on each of the first feet, they would be inherently match the cross-sectional shape, being at least half of the cross-sectional area of the support when the pair of canes are in side-by-side relation. In specific regards to claim 7, it would have been obvious to form the hand receiving section not more than about 3 inches in width since it is known that the handle must be adapted to fit a user's hand comfortably and stably for proper use. Furthermore, employing various sizes of the pair of cane handles is

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considered to be a design choice, well within the capabilities of one skilled in the art. Lastly, it is considered obvious and well known that resilient rubber pads and/or feet are employed on all types of canes, crutches and walking aids to enhance gripping means to the underlying surface.

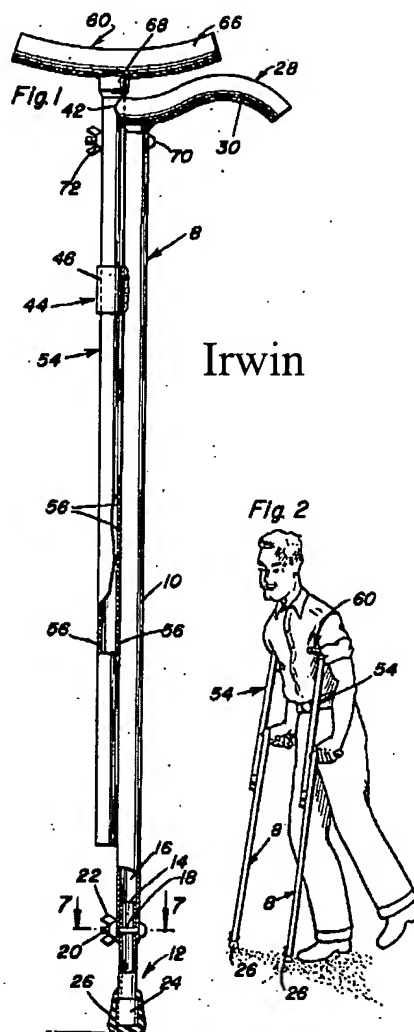


12. Claims 16-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 8900039 to Coogan and Irwin. WO 8900039 to Coogan discloses a convertible cane assembly

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(Figs. 1-4) comprising a pair of walking canes (10) each having an upright support (12, 112) providing an exterior; a first foot (24) adjacent a lower end of the support and a first handle (16, 116) adjacent an upper end of the support allowing the canes to be used separately, and a means connecting (28, 128, 26, 126) the canes together in a side-by-side position (Fig. 4) where the support exteriors are in facing relation so the assembly acts as a single cane providing a second handle (36) for grasping by a user's hand and a second foot for contacting an underlying surface; wherein the first feet in the side-by-side position of the support exteriors, provide a pair of flat surfaces (130) defining a single plane and thereby provide a second foot; wherein the first handles, in the side-by-side position of the supports, provide the second handle; wherein the first handle, in the side-by-side position of the support exteriors, are spaced apart and one of the first handles comprises the second handle; and the method of use of the pair of canes (Figs. 5-7). WO 8900039 to Coogan does not expressly disclose resilient feet. Irwin teaches a walking aid assembly (Figs. 1 and 2) having a support (10) with a resilient foot (26) at the lower end thereof. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the resilient foot taught by Irwin, modifying the first feet of the convertible cane assembly disclosed by WO 8900039 to Coogan, thus providing an anti-skid tip (Irwin: col. 2, lines 17-19). In specific regards to claim 20, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the convertible cane assembly, either using them together as a single unit, or separately as disclosed by WO 8900039 to Coogan, or in any manner so desired.

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### Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5,351,704 to Hunnicut, Jr. et al. teaches a cane assembly having a resilient rubber foot and two equal halves; DE 1090377 to Bayerl teaches a convertible cane assembly having a pair of canes; FR 2589694 to Ory teaches a convertible cane assembly wherein the connector means comprises a magnet; DE 3530387 to Bittner teaches a convertible cane assembly wherein the connector comprises a magnet.

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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Fitzgerald whose telephone number is (703) 305-4851. The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai, can be reached on (703) 308-2486. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9302 before final action, and (703) 872-9327 after final action. Any inquiry of a general nature relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1113.



JF  
05/08/2003

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